

STATE OF MICHIGAN
IN THE SUPREME COURT

DANIEL KNUE and JACQUELINE KNUE,

Plaintiffs/Appellees,

v

CONEILIUS "CASEY" SMITH, JOAN SMITH
AND STEVE SMITH,

Defendants/Appellants.

Supreme Court No. 130377

Court of Appeals
Case No. 255702

Lower Court:
Case No. 02-43890-CE

SUPPLEMENTAL BRIEF OF DEFENDANTS/APPELLANTS

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TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF FACTS	1
II. ARGUMENT.....	1
A. WHETHER ATTORNEYS FEES AND COSTS MAY BE ASSESSED PURSUANT TO MCR 2.405 IN A CASE INVOLVING AN EQUITABLE CLAIM TO QUIET TITLE.	1
B. WHETHER THE \$3,000 OFFER IN PLAINTIFFS/APPELLEES' COUNSEL'S LETTER DATED MAY 16, 2003 WAS AN OFFER OF JUDGMENT UNDER MCR 2.405 (A)(1), IN LIGHT OF THAT RULE'S REQUIREMENT OF A "SUM CERTAIN," AND GIVEN THE PLAINTIFFS/APPELLEES' ADDITIONAL DEMAND FOR A QUIT CLAIM DEED.....	8
III. CONCLUSION AND RELIEF REQUESTED.....	9

TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES

Page

Cases

<i>Dykes v William Beaumont Hospital</i> , 246 Mich App 471, 484; 633 NW 2d 440 (2001).....	7
<i>Grievance Administrator v Underwood</i> , 462 Mich 188, 194; 612 NW 2nd 116 (2000).....	6
<i>Hanley v Mazda Motor Corp</i> , 239 Mich App 596, 603; 609 NW 2d 203 (2000).....	7
<i>Hessel v Hessel</i> , 168 Mich App 390; 424 NW2d 59 (1988).....	3, 9
<i>Hinkle v Wayne County Clerk</i> , 467 Mich 337, 340; 657 NW 2d 315 (2002).....	6
<i>Knue v Smith</i> , 269 Mich App 217, 220; 711 NW 2d 84 (2005).....	7, 8
<i>Webb v Holzheuer</i> , 259 Mich App 389; 674 NW 2d 395 (2003).....	6

Other Authorities

Longhofer and McKenna, Michigan Court Rules Practice, § 3411.1, p 554.....	4
--	---

Rules

MCR 2.001	3
MCR 2.405	1, 3, 7, 8, 9
MCR 3.201	3
MCR 3.411	3, 4, 7

STATEMENT OF JUDGMENT OR ORDER APPEALED FROM
AND RELIEF SOUGHT

For the recitation of relevant facts, please see the initial Application for Leave to Appeal filed January 24, 2006 and Reply Brief filed March 6, 2006 submitted by Defendants/Appellants.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW BY ORDER DATED
SEPTEMBER 15, 2006

- I. WHETHER ATTORNEYS FEES AND COSTS MAY BE ASSESSED PURSUANT TO MCR 2.405 IN A CASE INVOLVING AN EQUITABLE CLAIM TO QUIET TITLE.
- II. WHETHER THE \$3,000 OFFER IN PLAINTIFFS/APPELLEES' COUNSEL'S LETTER DATED MAY 16, 2003 WAS AN OFFER OF JUDGMENT UNDER MCR 2.405 (A)(1), IN LIGHT OF THAT RULE'S REQUIREMENT OF A "SUM CERTAIN," AND GIVEN THE PLAINTIFFS/APPELLEES' ADDITIONAL DEMAND FOR A QUIT CLAIM DEED.

GROUND FOR APPEAL

For the recitation of relevant facts, please see the initial Application for Leave to Appeal filed January 24, 2006 and Reply Brief filed March 6, 2006 submitted by Defendants/Appellants.

I. STATEMENT OF FACTS

Please see the initial Application for Leave to Appeal filed January 24, 2006 and Reply Brief filed March 6, 2006 submitted by Defendants/Appellants.

On September 15, 2006, this Court entered an order which provides:

On the order of the Court, the application for leave to appeal the December 13, 2005 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other peremptory action. MCR 7.302(G)(1). The parties shall submit supplemental briefs within 28 days of the date of this order addressing whether attorney's fees and costs may be assessed pursuant to MCR 2.405(D) in a case involving an equitable claim to quiet title, and whether the \$3,000 offer in plaintiffs' counsel's letter of May 16, 2003 was an offer of judgment under MCR 2.405(A)(1), in light of that rule's requirement of a "sum certain," and given the plaintiffs' additional demand for a quitclaim deed. The parties should avoid submitting a mere restatement of the arguments made in their application papers.

This Supplemental Brief is submitted pursuant to this Court's September 15, 2006 Order. Further, Defendants/Appellants respectfully incorporate the contents of its earlier briefs.

II. ARGUMENT

A. WHETHER ATTORNEYS FEES AND COSTS MAY BE ASSESSED PURSUANT TO MCR 2.405 IN A CASE INVOLVING AN EQUITABLE CLAIM TO QUIET TITLE.

This Court has not yet addressed whether MCR 2.405, the offer of judgment rule, applies to a quiet title action.¹ Defendants argue it does not and the reasoning as set forth in Defendants' initial Application

¹ MCR 2.405 reads:

(A) Definitions. As used in this rule:

(1) "Offer" means a written notification to an adverse party of the offeror's willingness to stipulate to the entry of a judgment in a sum certain, which is deemed to include all costs and interest then accrued. If a party has made more than one offer, the most recent offer controls for the purposes of this rule.

(2) "Counteroffer" means a written reply to an offer, served within 21 days after service of the offer, in which a party rejects an offer of the adverse party and makes his or her own offer.

(3) "Average offer" means the sum of an offer and a counteroffer, divided by two. If no counteroffer is made, the offer shall be used as the average offer.

(4) "Verdict" includes,

- (a) a jury verdict,
- (b) a judgment by the court after a nonjury trial,
- (c) a judgment entered as a result of a ruling on a motion after rejection of the offer of judgment.

(5) "Adjusted verdict" means the verdict plus interest and costs from the filing of the complaint through the date of the offer.

(6) "Actual costs" means the costs and fees taxable in a civil action and a reasonable attorney fee for services necessitated by the failure to stipulate to the entry of judgment.

(B) Offer. Until 28 days before trial, a party may serve on the adverse party a written offer to stipulate to the entry of a judgment for the whole or part of the claim, including interest and costs then accrued.

(C) Acceptance or Rejection of Offer.

(1) To accept, the adverse party, within 21 days after service of the offer, must serve on the other parties a written notice of agreement to stipulate to the entry of the judgment offered, and file the offer, the notice of acceptance, and proof of service of the notice with the court. The court shall enter a judgment according to the terms of the stipulation.

(2) An offer is rejected if the offeree

- (a) expressly rejects it in writing, or
- (b) does not accept it as provided by subrule (C)(1).

(3) A counteroffer may be accepted or rejected in the same manner as an offer.

(D) Imposition of Costs Following Rejection of Offer. If an offer is rejected, costs are payable as follows:

(1) If the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror's actual costs incurred in the prosecution or defense of the action.

(2) If the adjusted verdict is more favorable to the offeree than the average offer, the offeror must pay to the offeree the offeree's actual costs incurred in the prosecution or defense of the action. However, an offeree who has not made a counteroffer may not recover actual costs unless the offer was made less than 42 days before trial.

(3) The court shall determine the actual costs incurred. The court may, in the interest of justice, refuse to award an attorney fee under this rule.

(4) Evidence of an offer is admissible only in a proceeding to determine costs.

(5) Proceedings under this rule do not affect a contract or relationship between a party and his or her attorney.

A request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment.

for Leave and Reply Brief establish that the Court of Appeals erred in concluding that MCR 2.405 applies to this purely equitable claim.

In *Hessel v Hessel*, 168 Mich App 390; 424 NW2d 59 (1988), the Court of Appeals concluded that the Supreme Court did not intend MCR 2.405 to apply to a proposed property settlement in a divorce action even though MCR 3.201 (the rule governing domestic relations actions) did not except MCR 2.405 from application. Specifically, the Court held that “a court’s property division represents an equitable distribution of the parties’ marital assets, not a determination of liability or damages.” *Id* at 395-396. The same reasoning should apply in the instant case. A quiet title action, similar to a proposed property settlement in a divorce action, is a purely equitable proceeding that asks the trial court to determine one’s interest in real property. There is no determination of liability or damages and Plaintiffs, just like the *Hessel* defendant, were not seeking monetary damages, but rather, an order of distribution.

As set forth in MCR 2.001, Chapter 2 of the Michigan Court Rules govern procedure in “all civil proceedings . . . except where a rule applicable to a specific court or a specific type of proceeding provides a different procedure.”²

Chapter 3 of the Michigan Court Rules, entitled “Special Proceedings and Actions,” provides a separate procedure for civil actions to determine interest in land. Specifically, MCR 3.411 addresses actions to determine interest in land, and, in conjunction with its statutory counterpart, MCL 600.2932, establishes a

(E) Relationship to Case Evaluation. Costs may not be awarded under this rule in a case that has been submitted to case evaluation under MCR 2.403 unless the case evaluation award was not unanimous.

² MCR 2.001 reads:

The rules in this chapter govern procedure in all civil proceedings in all courts established by the constitution and laws of the State of Michigan, except where the limited jurisdiction of a court makes a rule inherently inapplicable or where a rule applicable to a specific court or a specific type of proceeding provides a different procedure.

single, comprehensive right of action to determine disputed interests in land.³ Longhofer and McKenna, Michigan Court Rules Practice, § 3411.1, p 554.

³ MCR 3.411 reads:

(A) This rule applies to actions to determine interests in land under MCL 600.2932. It does not apply to summary proceedings to recover possession of premises under MCL 600.5701-600.5759.

(B) Complaint.

(1) The complaint must describe the land in question with reasonable certainty by stating

- (a) the section, township, and range of the premises;
- (b) the number of the block and lot of the premises; or
- (c) another description of the premises sufficiently clear so that the premises may be identified.

(2) The complaint must allege

- (a) the interest the plaintiff claims in the premises;
- (b) the interest the defendant claims in the premises; and
- (c) the facts establishing the superiority of the plaintiff's claim.

(C) Written Evidence of Title to be Referred to in Pleadings.

(1) Written evidence of title may not be introduced at trial unless it has been sufficiently referred to in the pleadings in accordance with this rule.

(2) The plaintiff must attach to the complaint, and the defendant must attach to the answer, a statement of the title on which the pleader relies, showing from whom the title was obtained and the page and book where it appears of record.

(3) Within a reasonable time after demand for it, a party must furnish to the adverse party a copy of an unrecorded conveyance on which he or she relies or give a satisfactory reason for not doing so.

(4) References to title may be amended or made more specific in accordance with the general rules regarding amendments and motions for more definite statement.

(D) Findings As to Rights in and Title to Premises.

(1) After evidence has been taken, the court shall make findings determining the disputed rights in and title to the premises.

(2) If a party not in possession of the premises is found to have had a right to possession at the time the action was commenced, but that right expired before the trial, that party must prove the damages sustained because the premises were wrongfully withheld, and the court shall enter judgment in the amount proved.

(E) Claim for Reasonable Value of Use of Premises.

(1) Within 28 days after the finding of title, the party found to have title to the premises may file a claim against the party who withheld possession of the premises for the reasonable value of the use of the premises during the period the premises were withheld, beginning 6 years before the action was commenced.

(2) The court shall hear evidence and make findings, determining the value of the use of the premises.

(a) The findings must be based on the value of the use of the premises in their condition at the time the withholding party, or those through whom that party claims, first went into possession. The use of the buildings or improvements put on the land by the party who withheld possession may not be considered.

(b) The findings must be based on the general value of the use of the premises, not on a peculiar value the use of the premises had to the party who withheld possession or might have had to the party who had title.

(F) Claim for Value of Buildings Erected and Improvements Made on Premises.

(1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims.

(2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made.

When interpreting a court rule, the Court applies general principles of statutory construction. *Hinkle v Wayne County Clerk*, 467 Mich 337, 340; 657 NW 2d 315 (2002); *Webb v Holzheuer*, 259 Mich App 389; 674 NW 2d 395 (2003). When the language of the rule is clear and unambiguous, the plainly expressed meaning must be enforced. *Hinkle*, supra, citing *Grievance Administrator v Underwood*, 462 Mich 188, 194; 612 NW 2d 116 (2000). If judicial construction is necessary, the Court aims to apply the

(3) The party claiming the value of the improvements may not recover their value if they were made in bad faith.

(G) Election by Party in Title.

(1) The person found to have title to the premises may elect to abandon them to the party claiming the value of the improvements and to take a judgment against that party for the value the premises would have had at the time of the trial if they had not been improved. The election must be filed with the court within 28 days after the findings on the claim for improvements. The judgment for the value of the premises is a lien against the premises.

(2) If the person found to have title does not elect to abandon the premises under subrule (G)(1), the judgment will provide that he or she recover the premises and pay the value of the improvements to the clerk of the court within the time set in the judgment.

(a) The person found to have title must pay the amount, plus accrued interest, before taking possession of the premises under the judgment, if that person is not already in possession.

(b) If the person found to have title fails to pay the amount of the judgment and the accrued interest within the time set in the judgment, he or she is deemed to have abandoned all claim of title to the premises to the parties in whose favor the judgment for the value of the improvements runs.

(H) Judgment Binding Only on Parties to Action. The judgment determining a claim to title, equitable title, right to possession, or other interests in lands under this rule, determines only the rights and interests of the known and unknown persons who are parties to the action, and of persons claiming through those parties by title accruing after the commencement of the action.

(I) Possession Under Judgment Not to be Affected by Vacation of Judgment Alone. When the judgment in an action under these rules determines that a party is entitled to possession of the premises in dispute, that party's right to possession is not affected by vacation of the judgment and the granting of a new trial, until a contrary judgment is rendered as a result of the new trial.

plain language of the rule, giving effect to the ordinary meaning of the words in light of the purpose to be accomplished. *Dykes v William Beaumont Hospital*, 246 Mich App 471, 484; 633 NW 2d 440 (2001).

It is undisputed that the purpose of MCR 2.405 is to “encourage settlement and to deter protracted litigation.” *Knue v Smith*, 269 Mich App 217, 220; 711 NW 2d 84 (2005); *Hanley v Mazda Motor Corp*, 239 Mich App 596, 603; 609 NW 2d 203 (2000). By the mechanism as set forth in MCR 2.405, the parties are encouraged to settle a matter without a trial if there is a possibility the monetary offer is more than what the offeror may achieve in a verdict. *Smith*, supra at 220. Monetary damages, however, were not at issue in this case.

The Court of Appeals failed to recognize or appreciate the difficulty encountered when an offer of judgment is submitted in a claim involving purely equitable relief, i.e., to determine one’s interest in property. The Supreme Court, in promulgating a specific court rule determining one’s interest in land, appreciated this difference and set forth a specific court rule to deal with this equitable proceeding. This Court did not intend quiet title actions to be subjected to the offer of judgment rule. The purpose of the offer of judgment rule is to encourage parties to assess the value of its case, i.e., predict a verdict, then present offers and counter offers in an attempt to agree on the case’s worth and resolve it prior to trial.

Offers of judgment in a quiet title action will always be meaningless because disputes over title to real property center on one’s particular interest or ownership in real property, not about the monetary value associated with the property. Thus, contrary to the Court of Appeals Opinion, Plaintiffs’ alleged offer to stipulate to the entry of a judgment amounts to gamesmanship, even if unintended. Plaintiffs did not seek monetary damages, but were proceeding under MCR 3.411 and utilizing the equitable powers of the trial court to obtain a declaration of title to property then owned by Defendants.

Allowing MCR 2.405 to apply to quiet title actions or any other equitable action for that matter, is counterproductive to the purpose of MCR 2.405 or to the purpose of MCR 3.411. It would discourage

individuals from protecting their property rights. Further, the reasoning of the Court of Appeals would apply to domestic relations matters, easement disputes, actions for partitions and even actions seeking injunctive relief. It seems unlikely the Supreme Court intended such application.

For these reasons, the Court of Appeals reversibly erred in concluding that MCR 2.405 applied to Plaintiffs' quiet title action and this Court should either peremptorily reverse or grant leave to appeal to consider the issue.

B. WHETHER THE \$3,000 OFFER IN PLAINTIFFS/APPELLEES' COUNSEL'S LETTER DATED MAY 16, 2003 WAS AN OFFER OF JUDGMENT UNDER MCR 2.405 (A)(1), IN LIGHT OF THAT RULE'S REQUIREMENT OF A "SUM CERTAIN," AND GIVEN THE PLAINTIFFS/APPELLEES' ADDITIONAL DEMAND FOR A QUIT CLAIM DEED.

The May 16, 2003 letter from Plaintiffs' counsel did not constitute a proper offer to stipulate to the entry of judgment pursuant to MCR 2.405 because it contained conditions separate from simply dismissing all claims.⁴ Plaintiffs' counsel has acknowledged before both the trial court and Court of Appeals the inarticulate nature of his May 16, 2003 letter.

MCR 2.405 is designed to resolve all claims in exchange for a monetary amount. Here, Plaintiffs offered to resolve all claims between the parties for \$3,000, and, in addition, Defendants were required to

⁴ Re: Knue v Smith, et al.
Case No. 02-43890-CE
Rule 2.405 Offer to Stipulate to Entry of Judgment

Dear Mr. Karafa:

Please accept and transmit this offer to your clients for Stipulation of entry of Judgment,
My clients are willing to stipulate to the entry of Judgment in the following manner:

1. Your clients transfer by Quit Claim Deed the disputed property as described in the survey of Holland Engineering, being approximately 1,032 square feet in a generally triangular plot of land;
2. In return for the transfer of the property, my clients will pay in cash or cash equivalent the sum of \$3,000.00 delivered to you and made payable as you direct;
3. All claims asserted by both sides dismissed with prejudice and without costs.

Please transmit this offer to your clients, and accept or reject said offer within 21 days as required under MCR 2.405.

execute a quit claim deed conveying the disputed property to Plaintiffs. By its very terms, the May 16, 2003 “offer” contained conditions separate from simply accepting money and dismissing claims.

The additional requirement (transfer of disputed property by quit claim deed) transformed Plaintiffs’ counsel’s May 16, 2003 letter into a conditional offer, contrary to the requirements of MCR 2.405. The Court of Appeals failed to appreciate the full extent of this offer, and erroneously concluded, that the offer contained “no separate conditions.” *Smith, supra* at 222.. *Hessel v Hessel, supra* is instructive on the issue as to whether the insistence on conditions met the “sum certain” term and Defendants rely on the arguments set forth in their previous submissions.

Here, the trial court was asked to determine one’s interest in real property, similar to the property distribution in a divorce action, and not a money judgment. The trial court was simply asked to determine Plaintiffs’ or Defendants’ interest in disputed property, thus, the only “verdict” would involve equitable powers of the trial court in determining whether Plaintiffs obtained title to the disputed property through adverse possession. Because conditions unrelated to an offer to stipulate to the entry of judgment for a monetary amount were contained in the May 16, 2003 letter, i.e., the conveyance of property by quit claim deed, said letter was not a proper offer to stipulate to the entry of judgment pursuant to MCR 2.405.

For these reasons, the Court of Appeals reversibly erred in concluding that the offer in this case contained no separate conditions. Accordingly, this Defendants request that this Court either peremptorily reverse the Court of Appeals December 15, 2005 opinion or grant leave to appeal to consider this issue.

III. CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Defendants/Appellants respectfully request that this Court either (1) peremptorily reverse the Court of Appeals’ December 15, 2005 Opinion; or (2) grant leave to appeal the

Court of Appeals' Opinion and review the issues presented in Defendants/Appellants' Application for Leave to Appeal. Defendants/Appellants further request any and all other relief to which they are entitled.

Respectfully submitted,

LAW, WEATHERS & RICHARDSON, P.C.

Dated: October 13, 2006

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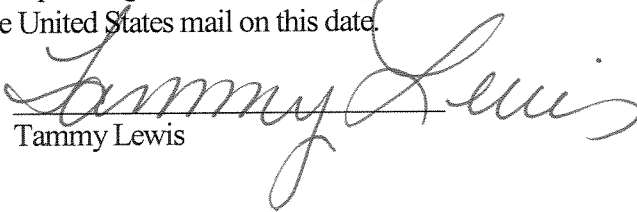
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STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

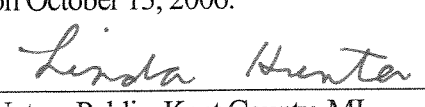
Tammy Lewis, being first duly sworn, deposes and says that she is a secretary at the law firm of Law, Weathers & Richardson, P.C., and that on October 13, 2006 she did cause to be served a copy of the Supplemental Brief of Defendants/Appellants upon:

Paul A. Ledford
Paul A. Ledford PLC
512 Washington Avenue
Grand Haven, MI 49417

Service was made by placing said pleading in a sealed envelope addressed to the above-named at the above-stated address and deposited in the United States mail on this date.


Tammy Lewis

Subscribed and sworn to before me
on October 13, 2006.


Notary Public, Kent County, MI
Acting in Kent County, MI
My Commission Expires: _____


Linda Hunter
NOTARY PUBLIC, Kent county, Michigan
Acting in Kent County
My Commission Expires 5-13-2008